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SUBJECT: SAFETY-RELATED DISCIPLINE

TO: Field Directors, Human Resources  
Western Region

As in all cases regarding discipline, and particularly safety-related discipline, the burden of proof is on management. We must show by a preponderance of evidence that an employee is guilty of that which he was charged. A preponderance of evidence is that which would lead a reasonable person to conclude that an act of misconduct more likely occurred rather than not. Therefore, it is extremely important to properly frame the charge. It is insufficient to simply charge an employee with failure to work in a safe manner with no specifics. We must specifically identify what "unsafe act" was committed.

It is alarming to note the number of safety-related discipline cases reversed at Step 3 of the grievance procedure. In most cases, the reversals are due to improper charges and failing to show, by a preponderance of evidence, the employee has committed an unsafe act. Much of the evidence presented at Step 3 involving safety-related discipline simply demonstrates an accident occurred. In many cases there is little evidence of a thorough investigation which would possibly reveal an unsafe act. Many cases do not specifically identify what an employee did wrong or that the unsafe act caused the accident.

Once we identify a specific unsafe act, we arrive at another obligation. What is the appropriate corrective action to take? There is a well-developed body of arbitration history which provides us guidance as to the most successful approach. Much of that guidance is directed to the fundamental requirement that we, as managers, exercise responsible judgement in each case based on specific individual considerations. We cannot succeed with a blanket policy on discipline for safety-related infractions, except for extremely serious acts of misconduct which may warrant removal, depending on the specific fact circumstances.

Arbitration history has taught us that any disciplinary action demands the exercise of responsible judgement so that employees will not be penalized out of proportion to the offense. This is particularly true of an employee who has a long previous record of completely satisfactory service. Discipline such as suspensions or removals should only be requested after a responsible determination has been made that a less severe penalty would not suffice.

When determining the appropriate discipline, a simple statement that responsible judgement was exercised is insufficient. The following, although not conclusive, are some of the considerations required in supporting disciplinary actions, particularly safety-related actions:

PRIOR TO DISCIPLINE

1. Thorough investigation and demonstration of such.
2. Specific identification of an unsafe act which contributed to the accident.
3. Due process. An absolute must. We are obligated to allow an employee to tell his side of the story before any discipline is imposed.

Did we consider:

4. The nature and seriousness of the infraction, including whether the offense was intentional, inadvertent or was committed maliciously?
5. Past disciplinary record (overall and similar offenses)?
6. Consistency of the penalty for similar offenses (disparate treatment)?
7. History of past accidents?
8. Adequacy and effectiveness of a lesser penalty?
9. The clarity with which the employee was on notice of any safety rules violated?
10. Whether management was partly responsible for the accident in any way? Did we follow our own rules and regulations? Did we require the use of unsafe equipment?

The determination of an appropriate penalty must involve a responsible balancing of the relevant factors in each individual case. Discipline cannot be arbitrary or capricious.

It is important to remember that we cannot charge an employee with working in an unsafe manner unless we can specifically identify an unsafe act. One key to exposing the unsafe act is a meaningful investigation. An even more useful tool in preventing an accident is to act on unsafe acts before an accident happens.

I strongly suggest this information be shared with all front-line supervisors in an effort to help broaden their concepts of just cause and to aid them in their discipline preparation.



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